

THE SEARCH WARRANT.

One of Lord Russell's Latest Decisions Related Thereto.

Just before leaving London on his way to this country, Lord Russell, sitting as a trial Judge in the Queen's Bench division of the High Court of Justice, rendered an interesting decision relating to the validity of search warrants, in a case which was tried before him without a jury in June, and then taken under advisement.

The suit was against a magistrate to recover damages for having issued a search warrant without authority of law. The person whose effects were searched under this warrant was a butler, and the warrant had been obtained against him by his master, who accused the man of theft at the time he was about to leave his master's employment. Nothing was found that could be proved to have been stolen, and the butler was acquitted of the charge of larceny. He then sued the justice of the peace who issued the search warrant, alleging that the instrument was fatally defective because there was no averment or proof before the magistrate that anything had been stolen, and because neither the warrant nor the complaint upon which it was granted specified the goods to be searched for.

In his judgment, delivered on the 5th of August, the Lord Chief Justice overruled both these objections, and decided that the search warrants were valid and afforded ample protection to the defendant.

It is not necessary under the existing English law, according to Lord Russell, to allege the actual commission of a felony in order to give the magistrate power to issue a search warrant. It is enough if the written information which constitutes the complaint in this class of cases, sets out reasonable grounds for the belief that the goods are being feloniously dealt with by the defendant. As to the failure of the warrant in this particular proceeding to indicate just what property was to be searched for, the Lord Chief Justice says: "I cannot find it anywhere laid down that a search warrant must specify the goods, and; indeed, it is easy to suggest many cases where it might be impossible for the person laying the information to do so. Probably in most cases there is no difficulty, and for that reason the usual forms for the information and the warrant are drawn up in that way."

As to this second point, the general rule in the states of the American Union is quite different. The thing for which the search is to be made must be specified or described as nearly as can conveniently be done. There are constitutional provisions to this effect in some of the states; and in New York the code of criminal procedure expressly provides that a search warrant can only be issued "upon probable cause, supported by affidavit, naming and describing the person, and particularly describing the property, and the place to be searched." The form prescribed for the search warrant, in the same code, requires the property for which the officer is to search to be described therein "with reasonable particularity."

Under our law, the search warrant upheld by Lord Russell could hardly have been deemed valid.—New York Sun.

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